SUPREME COURT OF NEW JERSEY
A-118 September Term 1998

MICHAEL J. MCDONNELL,

Plaintiff-Respondent,

v.

STATE OF ILLINOIS; STATE OF ILLINOIS, DEPARTMENT OF REVENUE; SAMUEL MCGAW; MICHAEL SCADUTO; JOE BARTLETTI; JUAN MORALES; FRANK NUGNES; and BRIAN MCGRAIL,

Defendants-Appellants.

Argued January 19, 2000–Decided March 2, 2000

On certification to the Superior Court, Appellate Division whose opinion is reported at 319 *N.J. Super.* 324 (1999).

Joel D. Bertocchi, Solicitor General of Illinois, a member of the Illinois bar, and *Stephen E. Klausner* argued the cause for appellants (Klausner, Hunter & Rosenberg, attorneys; *Mr. Klausner* and *David L. Rosenberg*, of counsel and on the brief).

Michael J. McDonnell argued the cause *pro se*.

PER CURIAM

We affirm the judgment and disposition of the Appellate Division substantially for the reasons set forth in Judge Braithwaite's thoughtful and comprehensive opinion. *McDonnell v. State of Illinois*, 319 N.J. Super. 324 (App. Div. 1999). We add these further observations, however, in view of the strongly asserted views expressed by the Solicitor General of Illinois, appearing *pro hoc vice* before our Court, that plaintiff's cause of action against the State of Illinois, the Illinois Department of Revenue (IDOR), and individual IDOR employees should be dismissed on comity grounds.

As noted by the Appellate Division opinion, *id.* at 333-35, the United States Supreme Court in *Nevada v. Hall*, 440 U.S. 410, 425-26, 99 S.Ct. 1182, 1191, 59 L.Ed. 2d 416, 425-26 (1979), concluded that although the Eleventh Amendment bars suits in federal courts against a state by citizens of another state, it does not prohibit a state from being sued in another state's courts nor does the full faith and credit clause require the forum State to apply another State's law concerning sovereign immunity if to do so would contravene a significant public policy of the forum State. The Court noted that the question whether one State should defer to the laws of a sister State consistently has been regarded as a matter of State policy, not constitutional mandate:

> The intimate union of these states, as members of the same great political family; the deep and vital interests which bind them so closely together; should lead us, in the absence of proof to the contrary, to presume a greater degree of comity, and friendship, and kindness towards one another, than we should be authorized to presume between foreign nations. And when (as without

> doubt must occasionally happen) the interest or policy of any state requires it to restrict the rule, it has but to declare its will, and the legal presumption is at once at an end.
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> [*Id.* at 426, 99 S. Ct. at 1182, 59 L. Ed. 2d at 428 (quoting *Bank of Augusta v. Earle*, 38 U.S. 519, 590, 13 Pet. 519, 590, 10 L. Ed. 274 (1839).]

Accordingly, the Court in *Hall* encouraged but did not compel states to accord deference to each others' laws as a matter of comity:

> It may be wise policy, as a matter of harmonious interstate relations, for States to accord each other immunity or to respect any established limits on liability. They are free to do so. But if a federal court were to hold, by inference from the structure of our Constitution and nothing else, that California is not free in this case to enforce its policy of full compensation, that holding would constitute the real intrusion on the sovereignty of the States—and the power of the people—in our Union.
>
> [440 U.S. at 426-427, 99 S. Ct. at 1191, 59 L. Ed. 2d at 429.]

In addressing the comity issue, the Appellate Division concluded that to require plaintiff to pursue his claims in Illinois courts pursuant to the Illinois Human Rights Act (HRA), 775 *Ill. Comp. Stat.* 5/1-101 to 5/10-103 (West 1993) would leave plaintiff remediless because of the definition of "employee" under the HRA applies only to individuals "performing services for remuneration within the State for an employer." 319 N.J. Super. at 335 (internal quotations omitted). Accordingly, the court con-

cluded that the HRA would not afford plaintiff a remedy. *Id.* at 336.

We note, however, that the HRA defines a "Public Employee" as "an employee of the State, agency or department thereof, unit of local government, school district, instrumentality or political subdivision." 775 *Ill. Comp. Stat.* 5/2-101(H). We also note that the HRA guarantees and secures several rights enumerated in Article 1, Section 17 of the Illinois Constitution, including the right to be free from discrimination. 775 *Ill. Comp. Stat.* 5/1-102(F). Those provisions of the HRA suggest persuasively that plaintiff could have asserted a cause of action in Illinois under that statute, subject to the limitation that the claim be filed only before the Illinois Human Rights Commission, 775 *Ill. Comp. Stat.* 5/8-111(c), and that monetary damages are limited to actual damages for injury or loss, back pay, and attorneys' fees. 775 *Ill. Comp. Stat.* 5/8A-104(B), (C), (G). Nevertheless, because the HRA requires discrimination claims to be filed with the Illinois Department of Human Rights within 180 days of when a claimant discovers his injury, 775 *Ill. Comp. Stat.* 5/7A-102(A)(1), we also conclude that plaintiff would have no remedy under the HRA because his claim would be time barred.

The Appellate Division rested its determination not to apply comity on the unavailability of redress for plaintiff under the HRA, its conclusion that the New Jersey Law Against Discrimination (LAD), *N.J.S.A.* 10:5-1 to -42, applied to the Illinois defendants, the fact that the LAD would apply to the State of New Jersey if it discriminated against a public employee in violation of the statute, and

New Jersey's strong public policy against discrimination in employment. We agree that those reasons argue persuasively against dismissing plaintiff's suit on comity grounds.

We also note that the Appellate Division's rationale is not inconsistent with the Supreme Court of Illinois' pronouncements on the application of comity. In *Schoeberlein v. Purdue University*, 544 N.E. 2d 283 (Ill. 1989), an Illinois resident sued Purdue University (Purdue), an instrumentality of the State of Indiana, in an Illinois state court to recover damages for personal injuries. Under Indiana law plaintiff could have sued Purdue only in Indiana state courts and was subject to a maximum recovery of $300,000. The Illinois Supreme Court noted that if plaintiff sought to assert a claim in Illinois courts against an Illinois state agency, jurisdiction would be limited to the Illinois Court of Claims and recovery would be limited to $100,000. *Id.* at 286. Because it concluded that Indiana's restrictions on its liability were not inconsistent with those of Illinois, the Court dismissed plaintiff's suit on comity grounds.

It observed:

> Thus, the generally accepted rationale of the States that have not, through comity, accepted another State's claim of sovereign immunity is that a sister State's claim of immunity will not be recognized if the forum of litigation permits recovery against the home State under similar circumstances. In Illinois, as noted above, under the circumstances presented in this case, Illinois could not be sued in the circuit courts of this State, and a limitation is placed on the amount that may be recovered against Illinois in the

> Court of Claims. We conclude that on the basis of comity, it is consistent with policies expressed by our Court of Claims Act and not inconsistent with policies in our State constitution to honor Indiana's reservation of sovereign immunity.
>
> [*Id.* at 288.]

Our court's precedents on the applicability of comity focus on an evaluation of the laws and policies of New Jersey and those of the affected state. *City of Philadelphia v. Austin*, 86 N.J. 55, 64 (1981); *Baldwin Enterprises, Inc. v. Town of Warwick, N.Y.*, 226 N.J. Super. 549, 553 (App. Div. 1988). Decisions by other state courts to extend comity to a sister state often reflect a determination that the recognition of the sister state's immunity would not offend the policies of the forum state. *See, e.g.*, *University of Iowa Press v. Urrea*, 440 S.E. 2d 203 (Ga. Ct. App. 1993) (recognizing Iowa's sovereign immunity under Iowa Tort Claims Act as a matter of comity does not offend public policy of Georgia whose Statutes accord comparable immunity to Georgia public entities); *Reed v. University of North Dakota*, 543 N.W. 2d 106 (Minn. Ct. App. 1996) (holding that the recognition of North Dakota's sovereign immunity law would not offend public policies of Minnesota); *Hawsey, III v. Louisiana Dep't of Social Servs.*, 934 S.W. 2d 723 (Tex. App. 1996) (dismissing plaintiff's libel and false imprisonment suit on comity grounds and noting similarity between Texas and Louisiana sovereign immunity provisions); *Jackett v. Los Angeles Dep't of Water & Power*, 771 P.2d 1074 (Utah Ct. App. 1989) (dismissing plaintiff's tort action on comity grounds and emphasizing congruity of Utah and California sovereign immunity statutes).

Courts that have declined to extend comity to sister states have stressed the fact that the forum state's law would not provide its own state with such immunity, or that the forum state's policies would be disserved by a recognition of comity. *See Head v. Platte County, Missouri*, 749 P.2d 6, 10 (Kan. 1988) (declining to extend immunity to Missouri under comity principles because to do so would result in "granting greater immunity to our sister state than the immunity which our citizens through the legislature have bestowed upon our state government"); *Ehrlich-Bober & Co., Inc. v. University of Houston*, 404 N.E.2d 726, 730 (N.Y. 1980) (declining to afford comity based on Texas institution's assertion of sovereign immunity because suit was based on commercial transaction that occurred primarily in New York and New York's "interest naturally embraces a very strong policy of assuring access to a forum for redress of injuries arising out of transactions spawned here"); *Morrison v. Budget Rent A Car Systems, Inc.*, 657 N.Y.S. 2d 721 (N.Y. App. Div. 1997) (declining to apply comity and recognize immunity under South Carolina Tort Claims Act where New York law would not extend immunity to New York in comparable circumstances).

Illinois contends that our refusal to apply comity and dismiss plaintiff's suit against the Illinois defendants would be disruptive to Illinois' revenue collection activity, a basic state governmental function. We perceive no such disruption. Illinois is free to continue to collect tax revenue due to it from New Jersey sources provided it does so without discriminating against employees who live in New Jersey in violation of the LAD. We acknowledge the possibility that the remedy of reinstatement authorized

by the LAD, N.J.S.A. 10:5-17 might constitute an affront to Illinois' sovereignty and we expressly preclude the award of reinstatement on remand. In all other respects, we are persuaded that the Appellate Division's refusal to extend comity to Illinois and to remand plaintiff's suit to the Law Division for trial constitutes the appropriate disposition of this appeal.

CHIEF JUSTICE PORITZ and JUSTICES O'HERN, GARIBALDI, STEIN, COLEMAN, LONG, and VERNIERO join in this opinion.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2373-97T5

MICHAEL J. MCDONNELL,

Plaintiff-Appellant,

v.

STATE OF ILLINOIS; STATE OF ILLINOIS, DEPARTMENT OF REVENUE; SAMUEL MCGAW; MICHAEL SCADUTO; JOSEPH BARTLETTI; JUAN MORALES; FRANK NUGNES; and BRIAN MCGRAIL,

Defendants-Respondents.

Argued: January 27, 1999–Decided March 15, 1999

Before Judges Stern, Braithwaite and Wecker.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County.

Michael J. McDonnell argued cause *pro se*.

Stephen E. Klausner argued the cause for respondents (Klausner, Hunter & Rosenberg, attorneys; David L. Rosenberg and Mr. Klausner, on the brief).

The Opinion of the court was delivered by BRAITHWAITE, J.A.D.

The central issue in this appeal is whether plaintiff, a New Jersey resident and former employee of the State of Illinois at the New Jersey field office of the Illinois Department of Revenue (IDOR), may sue the State of Illinois in a New Jersey Court for age discrimination under the New Jersey Law Against Discrimination (LAD), *N.J.S.A.* 10:5-1 to -42. Plaintiff filed a complaint against defendants alleging that he was denied promotions and terminated from his employment because of his age. Plaintiff's complaint also sought relief for: (1) alleged violations of the IDOR employee handbook grievance procedure; (2) intentional infliction of emotional distress; (3) negligence; and (4) violations of the Employment Retirement Income Security Act (ERISA), 29 U.S.C. § 1140.

Defendants moved to dismiss all counts of plaintiff's complaint for lack of subject matter jurisdiction and, alternatively, for summary judgment on the intentional infliction of emotional distress and negligence claims. Defendants' motion was denied. Thereafter, defendants moved for reconsideration. On reconsideration, the motion judge dismissed plaintiff's complaint finding that: (1) Illinois law applied; (2) New jersey did not have jurisdiction; (3) the LAD did not apply to the State of Illinois; (4) plaintiff failed to comply with the notice provisions of the New Jersey Tort Claims Act; (5) plaintiff failed to present evidence to support a claim for intentional infliction of emotional distress; and (6) an ERISA claim must be brought in federal court, and therefore our State courts lacked jurisdiction.

Plaintiff concedes that the motion judge properly dismissed the ERISA claim but contends that the judge erred in dismissing the remaining counts of his complaint. We hold that New Jersey has jurisdiction, that New Jersey law applies, and that the LAD does apply to the State of Illinois as an employer in this State. We therefore reverse the dismissal of the plaintiff's LAD claim found in count one of his complaint, and his claim for alleged violations of the IDOR Employee Handbook Grievance Procedure found in count two of his complaint. We affirm the dismissal of the remaining counts in his complaint.

I

Plaintiff is a New Jersey resident who was hired by the IDOR on November 28, 1988, as an "Accounting and Fiscal Administrative Career Trainee" to work in IDOR's New Jersey regional office in Paramus. On October 17, 1989, plaintiff was promoted to the position of Revenue Auditor I. Plaintiff performed audits of the tax records of individuals and business entities that were subject to Illinois taxes.

After his promotion to Revenue Auditor I, plaintiff was never promoted again. According to plaintiff, he was denied promotion because of his age. He was terminated from his position on August 10, 1993, when he was fifty-two years old. He asserts that he was terminated because of his age.

Defendants Juan Morales, Frank Nugnes, and Brian McGrail are all New Jersey residents and were employed by IDOR in positions superior to plaintiff. Defendants

Samuel McGaw, Michael Scaduto and Joseph Bartletti are Illinois residents. McGaw was the Commissioner of IDOR. Scaduto and Bartletti were superiors of plaintiff in the State of Illinois.

Plaintiff and defendants essentially agree on plaintiff's disciplinary history and the events leading up to his termination. In January 1993, plaintiff was suspended for five days after he allowed a "statute of limitations waiver to lapse," which resulted in a $700 loss to IDOR. Plaintiff was subsequently terminated after he allowed five tax payment checks, totaling $48,900, to sit on his desk for approximately six weeks. According to the individual defendants, when plaintiff was confronted, he denied knowing that he had the checks. Plaintiff disputes that he denied knowing that he had the checks.

While plaintiff was employed by IDOR, all of his paychecks were issued from the State of Illinois. No New Jersey taxes or other New Jersey deductions were withheld from his salary. In addition, following his termination, plaintiff filed a claim for unemployment compensation benefits with the Illinois Department of Employment Security and ultimately received unemployment compensation payments from Illinois.

II

We note at the outset that defendants do not urge that the Superior Court of New Jersey does not have personal jurisdiction.

> There are two types of personal jurisdiction: specific and general.

> Specific jurisdiction is established when a defendant's acts within the forum-state give rise to the cause of action.
>
> In contrast, when the defendant's presence in the state is unrelated to the subject matter of the lawsuit, general jurisdiction may be obtained based on the defendant's "continuous and Substantial" contacts with the forum.
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> [*Jacobs v. Walt Disney World, Co.*, 309 N.J. Super. 443, 492 (App. Div. 1998) (citations omitted).]

Clearly the State of Illinois and the individual defendants have "minimum contacts" with New Jersey. *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). "'[I]t is essential that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefit and protection of its laws.'" *Waste Management Inc. v. Admiral Ins. Inc. v. Canadian General Ins. Co.*, 513 U.S. 1183, 115 S.Ct. 1175, 130 L.Ed. 2d 1128 (1995) (*quoting Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed. 2d 1283, 1298).

The motion judge, in ruling that Illinois law applied to plaintiff's claims, seems to have confused choice of law with the issue of personal jurisdiction. Even if Illinois law applied, which we do not hold, that would not preclude a New Jersey court from exercising personal jurisdiction and adjudicating the matter applying Illinois law. *See Gantes v. Kason Corp.*, 145 N.J. 478, 484 (1996); *Veazey v. Doremus*, 103 N.J. 244, 247-49 (1986); *Keil v. National Westminster Bank*, 311 N.J. Super. 473, 488-91 (App. Div. 1998).

Defendants assert that "sovereign immunity and/or comity bars the New Jersey courts from exercising personal jurisdiction over the State of Illinois." We disagree. The doctrine of sovereign immunity "supports the conclusion that no sovereign may be sued in its own courts without its consent, but it affords no support for a claim of immunity in another sovereign's courts." *Nevada v. Hall*, 440 U.S. 410, 416, 99 S.Ct. 1182, 1186, 59 L.Ed. 2d 416, 422 (1979).

In *Hall* the United States Supreme Court held that the federal constitution does not prohibit one state from exercising jurisdiction over another. Plaintiff, John Hall, a California resident, was involved in a car accident with an employee of the University of Nevada (University), which is an instrumentality of the State of Nevada (Nevada). 440 U.S. at 411, 99 S.Ct. at 1184, 59 L.Ed. 2d at 419. At the time of the accident, the University employee was engaged in official business while driving a car owned by Nevada. *Ibid.* The accident took place in California. *Ibid.*

Hall and his mother filed suit in a California state court and properly served the University and Nevada. *Id.* at 412, 99 S.Ct. at 1184, 59 L.Ed. 2d at 419. The trial court quashed service on Nevada, but its decision was reversed by the California Supreme Court, which held that under California law, Nevada could be sued in a California court. *Ibid.* The matter was remanded and proceeded to trial. *Ibid.*

At trial, Nevada filed a motion to limit the amount of damages that plaintiffs could recover because Nevada's liability was limited to $25,000 under its tort claims act. *Ibid.* Nevada argued that the Full Faith and Credit

Clause of the United States Constitution required the California court to apply Nevada's statute limiting damages. *Id.* at 412-13, 99 S. Ct. at 1184, 59 L.Ed. 2d at 420. Nevada's motion was denied, and the plaintiffs were awarded $1,150,000. *Id.* at 413, 99 S.Ct. at 1184, 59 L.Ed. 2d at 420-21. The California Court of Appeals affirmed the judgment, and the California Supreme Court denied review. *Ibid.* The United States Supreme Court, however, granted certiorari and affirmed the California Court of Appeals' decision. *Id.* at 414, 427, 99 S.Ct. at 1185, 1191, 59 L.Ed. 2d at 421, 429.

The Supreme Court rejected the position that sovereign immunity barred California from exercising jurisdiction over Nevada. Moreover, the Court's examination of Article III and the Eleventh Amendment of the United States Constitution did not reveal any basis to prohibit California from exercising jurisdiction over Nevada. *Id.* at 421, 99 S.Ct. at 1188, 59 L. Ed. 2d at 425. "[T]here is no constitutional limitation upon the exercise of jurisdiction by the courts of one state over another state, even absent consent of the defendant state." *Baldwin Enters., Inc. v. Town of Warwick, N.Y.*, 226 N.J. Super. 549, 552 (App. Div.), *certif. denied*, 113 N.J. 364 (1988).

Although sovereign immunity does not prohibit New Jersey from exercising jurisdiction over Illinois, principles of comity may cause New Jersey to decline jurisdiction. *Ibid.* "But even though New Jersey jurisdiction is recognized, the question remains whether its exercise should now fairly be withheld under principles of comity." *Interstate Wrecking Co. v. Palisades Interstate Park Comm'n*, 57 N.J. 342, 350 (1971). Here, the application of comity requires us to examine the public policy of

both New Jersey and Illinois. *Baldwin Enters., supra*, 226 N.J. Super. at 553.

Plaintiff's claim is essentially one for age discrimination. Both Illinois and New Jersey have a strong public policy against discrimination. Illinois has a statute known as the Illinois Human Rights Act (HRA), 775 *Ill. Comp. Stat.* 5/1-101 to 5/10-103 (West 1993) which, among other things, prohibits discrimination in employment. Our review of that statute, however, convinces us that plaintiff would be unable to seek relief for his claim of age discrimination. First, the purpose of the HRA is "to promote the public health, welfare and safety of the *People of Illinois* by preventing unlawful discrimination in employment . . . ." 775 *Ill. Comp. Stat.* 5/1-101 (emphasis added). Second, the avowed public policy of Illinois with respect to employment discrimination is "[t]o secure *for all individuals within Illinois* . . . freedom from discrimination . . . ." 775 *Ill. Comp. Stat.* 5/1-102(A) (emphasis added). Third, and perhaps most significantly, the definition of employee includes "[a]ny individual performing services for remuneration *within the State* for an employer." 775 *Ill. Comp. Stat.* 5/2-101(A)(1)(a) (emphasis added). The definition of employer includes the State of Illinois "and any political subdivision, municipal corporation of other governmental unit or agency, without regard to the number of employees." 775 *Ill. Comp. Stat.* 5/2-101(B)(1)(c).

We did not find any case law that addresses the issue of whether the HRA applies to a non-Illinois resident who is employed by the State of Illinois outside of its borders. However, the clear language of the HRA, as well as its stated purpose, leads us to the conclusion that the Illi-

nois Legislature intended that, in this context, the HRA should apply only to Illinois residents who work for employers within the State of Illinois. We are satisfied that an Illinois court would similarly interpret the HRA as we do.

> The cardinal rule of all statutory construction, to which other rules are subordinate, is that the true intent and meaning of the legislature must be ascertained and given effect. The language used in a statute is the primary source for determining this intent, and where that language is certain and unambiguous, the proper function of the courts is to enforce the statute as enacted. Absent statutory definitions indicating a different legislative intention, courts will assume that words have their ordinary and popularly understood meaning.
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> [*General Motors Corp. v. Industrial Comm'n*, 338 N.E. 2d 561, 564 (Ill. 1975) (citations omitted).]

In the Interest of M.G., 307 N.J. Super. 348, 354 (App. Div.), *certif. denied*, 154 N.J. 607 (1998) (holding that statute's "*[c]lear language precludes . . . any meaning other than as expressed*"); *State v. Panther Valley Property Owners Ass'n*, 307 N.J. Super. 319, 329 (App. Div. 1998) (holding that *statute's plain language* "should be '*given its ordinary meaning* and [be] construed in a common sense manner to accomplish the legislative purpose' ") (citation omitted). Accordingly, we conclude that although Illinois has a strong public policy against discrimination, by the clear language of the statute, it does not apply to plaintiff.

When we look to the LAD, plaintiff's age discrimination claim is covered, and the only issue is whether it

applies to Illinois. We are satisfied that the definition of employer, under these circumstances, includes Illinois. The LAD provision applicable to plaintiff's claim prohibits an *employer* from denying promotions and discharging an employee because of the employee's age. *N.J.S.A.* 10:5-12a (emphasis added). Illinois and IDOR were plaintiff's employer. Under the LAD, however, the term "employer" does not specifically identify non-New Jersey governmental entities. The LAD defines employer as follows: "employer includes all persons as defined in subsection a[1] of this section unless otherwise specifically exempt under another section of this act, and includes *the State*, any political or civil subdivision thereof, and all public officers, agencies, boards or bodies." *N.J.S.A.* 10:5-5e (emphasis added).

One could argue that the language "the State" in the definition of employer only applies to New Jersey. Support for this construction can be found by comparison with other statutes where the Legislature clearly sets forth that "the State" includes other states of the United States. Compare, *N.J.S.A.* 2A:41A-1 (Interstate Compact on Interpleader identifying "[a] State" to mean, among other things, "a State of the United States") and *N.J.S.A.* 2A:159A-2(a) (Interstate Agreement on Detainers identifying "state" to mean, among other things, "a State of the United States") and *N.J.S.A.* 30:7B-2(h) (Interstate Transfers of Mentally Ill Act identifying "State" to mean,

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[1] *N.J.S.A.* 10:5-5a states: "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.

among other things, "any State . . . of the United States") with *N.J.S.A.* 18A:72-10(a) (Higher Education Assistance Authority Law referring to institutions "outside the State") and *N.J.S.A.* 59:1-3 (Tort Claims Act identifying "State" to mean "the State") and *N.J.S.A.* 59:13-2 (New Jersey Contractual Liability Act identifying "State" to mean "the State"). These examples could arguably support the position that the words "the State" found in the LAD definition of employer apples only to New Jersey because in those situations where the Legislature intended a different meaning it has clearly said so.

However,

> Unless it be otherwise expressly provided or there is something in the subject or context repugnant to such construction, the following words and phrases, when used in any statute and in the revised statutes, shall have the meaning herein given to them.
>
> . . .
>
> State. The word "State" extends to and includes any State, territory or possession of the United States, the District of Columbia and the Canal Zone.
>
> [*N.J.S.A.* 1:1-2]

Here, the LAD does not otherwise expressly provide that the phrase "the State" is limited solely to New Jersey. Moreover, the extension of the phrase to include Illinois is not "repugnant to such construction," *ibid.*, because the LAD is to be liberally construed to further its goal of eradicating "'the cancer of discrimination.'" *Dale v. Boy Scouts of America*, 308 N.J. Super. 516, 533

(App.\Div.), *certif. granted*, 156 N.J. 381 (1988) (quoting *Fuchilla v. Layman*, 109 N.J. 319, *cert. denied sub. nom.*, *University of Medicine and Dentistry of N.J. v. Fuchilla*, 488 U.S. 826, 109 S.Ct. 75, 102 L.Ed. 2d 51 (1988)).

Under the circumstances, to construe the LAD otherwise, so as to not include Illinois, would be contrary to its purposes. The State of Illinois maintains an office in New Jersey employing New Jersey residents where it reaps certain benefits from doing business in New Jersey. To limit the reach of the LAD so as to exclude other states who do business here and employ our residents would be manifestly unfair to those New Jersey residents employed by those states. The State of New Jersey, unfortunately, is not the only state in our union that is capable of discrimination. Other states who do business here and subject our residents to acts of discrimination should be subject to our laws. We do not think that the LAD, in the area of employment discrimination, should apply to the State of New Jersey and not to another state operating within our borders and employing our residents. To interpret the LAD otherwise would be "irrational." *Dale*, *supra*, 308 N.J. Super. at 533.

Although the policies of both New Jersey and Illinois are similar with respect to discrimination in employment, plaintiff has no remedy in Illinois. Our failure to exercise jurisdiction would leave plaintiff without a remedy for his claims. Leaving plaintiff with no remedy either under the law of the state where he resides and worked, or under the law of the state that employed him, is repugnant to New Jersey's statutorily based policy of protecting its residents from discrimination, *N.J.S.A.* 10:5-3. When applying principles of comity, one important in-

terest of the forum state is the protection of its citizens. *Baldwin Enterprises, supra*, 226 N.J. Super. at 552.

Moreover, despite the similarity in purpose between New Jersey's and Illinois' anti-discrimination statutes, they diverge greatly in the remedy to be awarded to a victim of discrimination. New Jersey permits recovery of "[a]ll remedies available in common law tort actions . . . ." *N.J.S.A.* 10:5-13. Illinois is not so generous. It limits a plaintiff's recovery under the HRA to his or her actual damages. *See* 775 *Ill. Comp. Stat.* 8A/104. Further, HRA claims in the state of Illinois may not be instituted in a court proceeding, but only before the Human rights Commission created by the HRA. 775 *Ill. Comp. Stat.* 8/101. Even if a claimant under the HRA could recover in tort, the damages would be limited to $100,000. 705 *Ill. Comp. Stat.* 505/8(d).

When we consider the public policy of New Jersey and Illinois in these circumstances, principles of comity do not cause us to conclude that New Jersey ought to decline jurisdiction over Illinois. The circumstances are compelling for exercising jurisdiction considering our strong public policy against discrimination and the lack of an available remedy to plaintiff under Illinois law.

III

We deem it appropriate to comment briefly on the choice of law issue. Based on our earlier discussion, we are satisfied that New Jersey law applies to plaintiff's viable claims. New Jersey's choice of law rule "applies a flexible 'governmental interest' standard, which requires application of the law of the state with the greatest

interest in resolving the particular issue that is raised in the underlying litigation." *Gantes v. Kason Corp.*, *supra*, 145 N.J. at 484 (citation omitted). "The initial prong of the governmental interest analysis entails an inquiry into whether there is an actual conflict between the law of the respective state . . . ." *Ibid.* Here, as noted *supra*, there is a conflict because plaintiff would not have a remedy in Illinois.

The second prong of the analysis "seeks to determine the interest each state has in resolving the issue in dispute. That analysis requires the court to 'identify the governmental policies underlying the law of each state and how those policies are affected by each state's contacts to the litigation and to the parties.'" *Id.* at 485 (quoting *Veazey*, *supra*, 103 N.J. at 248).

The purpose of HRA is to prevent unlawful discrimination in order to promote the health, welfare and safety of Illinois' citizens. In the context of employment discrimination, Illinois' policy is to protect Illinois' residents who work for employers within the State of Illinois. By contrast, the LAD also seeks to prevent unlawful discrimination, but is much broader in its scope than the HRA. It is to be liberally construed. "[T]he clear public policy of this State is to abolish discrimination in the work place." *Fuchilla*, *supra*, 109 N.J. at 334.

> As the Legislature has declared, "discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and functions of a free democratic State." The day is long past when any employee need endure discrimination because of his or her race, religion, national origin, [age] or gender.

> Employment discrimination is not just a matter between employer and employee. The public interest in a discrimination-free work place infuses the inquiry.
>
> [*Id.* at 334-35 (citations omitted).]

Plaintiff is a New Jersey resident. The acts that are the basis of his claims occurred in New Jersey. Three of the individual defendants are New Jersey residents. Illinois maintains an office in New Jersey to assist in the collection of taxes from individuals and entities liable for Illinois taxes. Applying our choice-of-law rule, New Jersey law applies only to plaintiff's viable claims.

IV

The motion judge erroneously concluded that plaintiff failed to comply with the notice provision of the New Jersey Tort Claims Act (Act). *N.J.S.A.* 59:8-8 and -9. Claims of discrimination are not subject to the notice requirements of the Act. *Fuchilla*, *supra*, 109 N.J. at 337-38. The Illinois statute covering notice of claims is likewise not applicable. Any violation under the HRA is brought before the Illinois Human Rights Commission which has exclusive jurisdiction over claimed violations of the HRA. 775 *Ill. Comp. Stat.* 8/101; *Mein v. Masonite Corp.*, 485 N.E. 2d 312, 315 (Ill. 1985). The Illinois notice provision applies only to claims filed in its court of claims. 705 *Ill. Comp. Stat.* 505/22-1. Further, applying our choice-of-law rule, on the issue of notice, New Jersey law would apply. Here, as noted *supra*, New Jersey has the most significant interest in the litigation *Gantes*, *supra*, 145 N.J. at 492-93.

V

Finally, we affirm the dismissal of the last three counts of plaintiff's complaint. Plaintiff's negligence claim is barred by the Workers' Compensation Statute. *N.J.S.A.* 34:15-7. It is also barred in Illinois. 820 *Ill. Comp. Stat.* 305/3 *Mier v. Staley*, 329 N.E. 2d 1 (Ill. App. Ct. 1975).

Plaintiff concedes that his ERISA claim was properly dismissed. We agree. It can only be commenced in federal court.

We also affirm the dismissal of plaintiff's claim for intentional infliction of emotional distress. Because defendant's motion, in this respect, was based on matters outside the record, it was in the nature of a motion for summary judgment. R. 4:6-2(e). "Generally speaking, to establish a claim for intentional infliction of emotional distress, the plaintiff must establish intentional and outrageous conduct by the defendant, proximate cause, and distress that is severe." *Buckley v. Trenton Savings Surety*, 111 N.J. 355, 366 (1988). The same standard applies under Illinois law. *See Pavilon v. Kaferly*, 561 N.E. 2d 1245, 1250 (Ill. App. Ct. 1990). Plaintiff's allegations do not give rise to a finding that defendants' conduct exceeded "all possible bounds of decency." *Ibid.*; *Taylor v. Metzger*, 152 N.J. 490, 509 (1998). No reasonable fact-finder could conclude that defendants' conduct satisfied the standard for intentional infliction of emotional distress. The judge properly granted summary judgment to defendants with respect to this claim. *See Brill v. Guardian Life Ins. Co.*, 142 N.J. 520 (1995).

VI

We reverse the dismissal of count one and two and remand for further proceedings consistent with this opinion. We affirm in all other respects.

SUPERIOR COURT OF NEW JERSEY

Peter F. Boggia
Judge

Bergen County Court House
Hackensack, N.J. 07601-7686

October 24, 1997

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Mr. Michael J. McDonnell
97 Abbey Court
Ramsey, New Jersey 07446

Re: McDonnell v. State of Illinois
Docket No. Ber-L-006904-95

Gentlemen:

This matter comes before the Court by way of defendant's Motion for Reconsideration. This case arises out of an alleged wrongful discharge. The plaintiff, a New Jersey resident, was an employee of the State of Illinois. He was working out of the Paramus office as a field auditor for the Department of revenue of the State of Illinois.

Defendant maintains that the New Jersey Courts lack jurisdiction to hear this matter. At all times relevant to this litigation, the plaintiff's employment with the Illinois Department of Revenue was governed by the laws of the State of Illinois. All the terms of employment, in-

cluding salary, pension, benefits and promotions are fixed in Illinois by statute. The decision to hire the plaintiff was made in the Springfield, Illinois office. The plaintiff received his pay checks from Illinois and after his termination, received unemployment benefits from the state of Illinois. The plaintiff has been unable to offer any testimony that his employment was not governed by Illinois law or that the decision to terminate his employment was made in New Jersey. Accordingly, the Court held that the plaintiff's relationship is not governed by New Jersey law, but rather Illinois law.

Plaintiff attempts to establish jurisdiction by relying on *Nevada v. Hall*, 440 U.S. 410 (1979). However, this reliance is misplaced because the Hall case and the matter before this court are factually distinct. The *Hall* case involved an automobile accident caused by the negligence of a vehicle owned by the State of Nevada while in California. The United States Supreme Court held, that suits involving traffic accidents occurring outside the State of Nevada could hardly interfere with Nevada's capacity to fulfill its sovereign responsibilities. *Id.* at 424. This is not the matter in the case before this court. Mr. McDonnell was an employee of the State of Illinois working in the Paramus New Jersey office. Unlike *Hall*, which involved an automobile negligence case, this matter concerns the decision of a state to terminate the employment relationship of one of its employees. To second guess the decision by the State of Illinois to terminate an employee in these fiscally difficult times would clearly offend the sovereign responsibilities of Illinois. Accordingly, this Court will not second guess the decisions by the State of Illinois regarding employment relationships.

Additionally, this Court believes that the legislative intent behind the LAD was to be binding only upon the State of New Jersey. *See N.J.S.A.* 10:5-5(e). Therefore, New Jersey's LAD does not apply to the State of Illinois.

The plaintiff in the matter before this Court has failed to comply with the Notice Provisions of the New Jersey Tort Claims Act (Title 59) or the applicable Illinois statute. As a result of the plaintiff's failure to comply with the Notice Provisions, the State of Illinois was not given the advanced warning of the potential claim against it. Accordingly, the tort claims against the State of Illinois must be dismissed as a matter of law.

Plaintiff has failed to provide any evidence of extreme or outrageous conduct as required by *Buckley v. Trenton Savings*, 111 N.J. 344 (1988), to establish a claim for emotional distress. Therefore, the Fifth Count for emotional distress is dismissed as a matter of law. The Fifth Count of plaintiff's complaint alleges a violation of ERISA. Under Federal law, an ERISA claim must be brought in Federal Court. This Court lacks the subject matter jurisdiction to hear the ERISA claim as a matter of law, and the Fifth Count must be dismissed.

Accordingly, the Court grants the defendants' Motion for Reconsideration, and all of the plaintiff's claims against the State of Illinois are dismissed as a matter of law for the aforementioned reasons.

Very truly yours,

Peter F. Boggia, J.S.C.
PFB: jak

SUPERIOR COURT OF NEW JERSEY

Peter F. Boggia
Judge

Bergen County Court House
Hackensack, N.J. 07601-7686

September 19, 1997

David L. Rosenberg, Esq.
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Mr. Michael J. McDonnell
97 Abbey Court
Ramsey, New Jersey 07446

RE: McDONNELL VS. STATE OF ILLINOIS, ET AL.
DOCKET NO.: BER-L-006904-95

Gentlemen:

This matter comes before the court by way of defendants' motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction, defendants' motion for more specific answers to interrogatories and plaintiff pro se's motion for default for failure to comply with discover requests.

This case arises out of an alleged employment discrimination. Plaintiff, a New Jersey resident, was an employee of the State of Illinois Department of Revenue. He was employed as a field auditor for the Department in the Paramus, New Jersey office.

Defendants contend that the Courts of New Jersey do not have jurisdiction over this matter. This court dis-

agrees. The plaintiff is a New Jersey resident, working for an office in this state. Furthermore, plaintiff alleges that the actual decision to terminate his employment was made in the New Jersey office.

Therefore the court denies defendants' motion to dismiss.

As to the remaining discovery related motions; the court denies those motions as well. This case has a trial date for October 14, 1997. The time for discovery is long past and the granting of these motions would only interfere with the trial date.

Yours very truly,

Peter F. Boggia, J.S.C.
PFB:jak